

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii

June 12, 2009

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: Amendment No. 5 of Timber Land License No. H-101 held by  
Tradewinds Forest Products, LLC.

**Background:** At its December 12, 2008 meeting under Item C-6, the Board of Land and Natural Resources (Board) approved Amendment No. 4 (Exhibit A) of Timber Land License No. H-101 (License) held by Tradewinds, LLC (TW), a Delaware limited liability company. Principal components of Amendment No. 4 included:

1. Clarification that stumpage pre-payments made by TW to the Department are non-refundable. To date, TW has made such monthly payments to the Department for the period July, 2008 to January, 2009 totaling \$175,000.
2. Incorporation of payment terms for further extensions of License Milestone No. 3, particularly relating to the "Drop-Dead" date for completion of the proposed veneer plant. Since the December 12, 2008 Board agenda item, the Department has received two (2) TW payments for extension of this deadline to January 1, 2009, and further for the period of January 1, 2009 to January 1, 2010 totaling \$40,500. License Amendment No. 4 also provided TW with the options to make further payments for two (2) additional extension periods ending July 1, 2010, and December 31, 2010, respectively.
3. New progress deadlines stating: (1) TW must obtain County of Hawaii issued and approved building permits for all major components of the veneer mill no later than December 31, 2009; and (2) Secure all financing needed for construction of the veneer mill no later than December 31, 2009.
4. A variety of adjustments to forestry field practices:
  - a. A requirement to leave residues for harvested trees (trunk or branch diameter of four (4) inches) in the field to promote nutrient cycling dynamics.
  - b. Establishment of a 500 acre annual limit for harvest of the "Eucalyptus Harvest" forest type.
  - c. Addition of guidelines for reforestation practices detailing options and responsibilities of both TW and the Department.
  - d. Deletion of a clause that formerly required TW to convert a percentage of harvested acreage to a particular species – Queensland maple.

- e. Updated terms relating to "Harvest Stand" forest type acreage included in the License by:
  - i. Detailing TW rights to harvest trees it plants "Harvest Stand" forest type acreage during the term of the License.
  - ii. Detailing how TW must leave all "Harvest Stand" acreage in a forested condition upon early termination or expiration of the License.
- f. Updated terms relating to "Replacement Stand" forest type acreage included in the License by:
  - i. Removing acreage for timber stands growing on pahoehoe dominated soils from the License.
  - ii. Updating TW compensation to the Department for use of remaining acreage from a value based on wood volume harvested to a simple annual land rent basis.
  - iii. Establishing a schedule by which TW must reforest "Replacement Stands" or have these acres removed from the License.
  - iv. Detailing the right of TW to harvest trees it plants within such acreage during the term of the License.
  - v. Detailing how TW must leave all "Replacement Stand" acreage in a forested condition upon early termination or expiration of the License.
- 5. Updating License tables for included timber stands and associated species and acreage information.

**Discussion:** After review and approval by the Department of the Attorney General (DAG), License Amendment No. 4 was fully executed on March 20, 2009. TW is current relating to all terms of its License (as amended) with the Department, with the exception of Background Item No. 1 above: The License currently compels TW to pay the Department \$25,000 for each month during which the veneer mill is not completed. TW may apply such pre-payments as a credit against State timber resources ("stumpage") harvested once TW becomes operational. TW paid the Department its monthly fee through January, 2009, but is now delinquent for payments during the period of February, 2009 to present.

The TW February, 2009 stumpage pre-payment was due on March 10, 2009. In early April, 2009, TW informed Staff that it was experiencing cash-flow difficulties. Over the next several weeks, Staff and TW stayed in communication regarding this situation and met twice, including one meeting with a prospective TW investor. As a result of these meetings, TW submitted a letter dated May 15, 2009 to the Division detailing it's current financial position, on-going strategies for addressing its need for additional investors, and a request for amendments to it's License to address the situation of delinquent stumpage pre-payments (Exhibit B).

TW requests that the Department forbear on collections of monthly stumpage pre-payments for seven (7) months from March, 2009 to September, 2009. TW alternatively proposes to pay the total due for these months (\$175,000), plus a \$5,000-per-month forbearance fee (\$35,000) no later than October 10, 2009.

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

December 12, 2008

*as amended*

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**Approved by the Board of  
Land and Natural Resources  
at its meeting held on**

12/12/2008

Land Board Members:

SUBJECT: Amendment No. 4 of Timber Land License No. H-101 held by  
Tradewinds Forest Products, LLC.

**Background:** At its September 23, 2005 meeting under Item C-2, the Board of Land and Natural Resources (Board) approved Amendment No. 3 (Exhibit A) of Timber Land License No. H-101 (License) held by Tradewinds, LLC, a Washington limited liability company. Principal components of Amendment No. 3 included:

1. The assignment of interest to Rockland Capital Energy Investments, LLC as a Phase I investor for Tradewinds, LLC.
2. The assignment of the License from Tradewinds LLC, a Washington limited liability company, to Tradewinds Forest Products, LLC, a Delaware limited liability company (TW).
3. Updated TW project Milestones including:

<u>Milestone</u>	<u>Description</u>	<u>Deadline</u>
1.	Commence the filing of all applications for all state and federal permits associated with the project	January 15, 2006
2.	Commence plant construction	February 1, 2007
3.	Complete plant construction (construction is deemed complete when TW has received occupancy permits for both the veneer and power plant)	July 1, 2008
4.	A payment provision for TW option to extend the original Milestone 3 deadline from calendar year 2005 to July 1, 2008.	
5.	Penalty provisions for missing Milestones 1, 2 and 3, and establishment of a project "Drop Dead" date of January 1, 2009, with its own payment provision.	
6.	An updated method establishing new timber stumpage pricing protocols.	

ITEM C-6

EXHIBIT A

June 12, 2009

After discussing current TW business model development efforts and reviewing their current request, Staff notes that TW has already made significant payments to the Department. In addition, despite our currently challenging economic environment, and how that relates to the ability of businesses to obtain financing, Staff feels that TW has made reasonable progress in its efforts to become operational. TW stated that it is targeting June 15, 2009 for finalizing equity term sheets with the parties listed in its letter dated May 15, 2009, and should be able to report to the Board on its progress in doing so during the hearing of this agenda item. Assuming TW is able to confirm continued favorable progress to the Board, Staff supports the TW forbearance request.

To be used only by the Department  
for the purpose of the hearing  
no other use is permitted

RECOMMENDATION:

That the Board of Land and Natural Resources approve Amendment No. 5 to Timber Land License No. H-101 whereby:

- A. The Department forbears on collection of monthly stumpage pre-payments from TW pursuant to License Section 3.1.1, as amended, for a period of seven (7) months from March, 2009 to September, 2009.
- B. After said period TW shall pay the Department the total stumpage pre-payments due for these seven (7) months equaling \$175,000, plus a \$5,000-per-month forbearance fee equaling \$35,000, for a total of \$210,000, no later than October 10, 2009.
- C. TW shall resume regular monthly stumpage pre-payments to the Department after this time, with the \$25,000 October, 2009 monthly payment due no later than November 10, 2009.
- D. All proposed amendments shall be subject to review and approval by the Department of the Attorney General.

Respectfully submitted,



PAUL J. CONRY  
Administrator

Attachments

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
LAURA H. THIELEN, Chairperson  
Board of Land and Natural Resources

7. The removal of approximately 6.8% of timber resources from the original License acreage to promote a sawmill startup.
8. Changes in License descriptions or definitions of Cure Period, Clarification in Scope of Facility to be Constructed, Termination upon a Change of Ownership of TW, and Clarification that Merchantable Logs will not be used as Biomass Fuel.

**Discussion:** After review and approval by the Department of the Attorney General (DAG), License Amendment No. 3 was fully executed on October 10, 2005. Over time and in consultation with the DAG, the Division determined that TW had accomplished Milestones 1 and 2 in a timely manner. TW also remains current on both its payments for further time extensions of Milestone 3, and for monthly timber stumpage pre-payments through September, 2008.

Earlier this year it became apparent that Milestone 3 would not be met by TW. The Division requested (Exhibit B) and received from TW (Exhibit C) clarification of their intent relating to the option to extend Milestone 3 under the amended License to January 1, 2009 – TW exercised this option. Per License Amendment No. 3, Term No. 4.d, TW is obligated to pay the Department on or before January 1, 2009, \$18,000 for the extension of Milestone 3 from July 1, 2008 to January 1, 2009. The Department has not received this payment to date.

It now appears that TW will not meet the extended Milestone 3 deadline, which would result in default of the License on January 1, 2009. In a letter to the Department dated October 17, 2008 (Exhibit D), TW provided an extensive status update for their business model and mill development to date, and requested a one-year extension of the License as amended.

The Division has evaluated this request in relation to actual accomplishments by TW to date. As indicated in their October 17, 2008 letter, TW has made significant advances in their business model development. Highlights include approval of their Clean Air permit through the Hawaii Department of Health and closing of a power purchase agreement with Hawaii Electric Light Company – the only forest products company to reach these milestones in Hawaii. The last principal obstacle remaining before TW becomes operational is their need to secure \$50 million in additional debt and equity financing.

Given the complexities and challenges facing developers of forest industry facilities in Hawaii, the Division's long-term interest in supporting such development, and the current TW position including progress with permits, Staff recommends providing TW with the opportunity to secure additional financing with its current assets. However, Staff feels that the Department should establish appropriate milestones and be fairly compensated for a further delay by TW. The Division also proposes amendments to the License it believes are needed to provide proper oversight and reflect changes in current market conditions.

**Proposed further amendments to the License, as currently amended:**

- A. Amend License Section 3.1.1.b to clarify that stumpage pre-payments by TW to the Department are non-refundable: Stumpage pre-payments were negotiated between the Department and TW in 2005 as part of the compensation package due to the Department for delays in TW performance. The intent of that negotiation was to ensure that anticipated stumpage revenue streams to the Department would occur at least at minimal levels, in a timely manner, and that any pre-payments would be non-refundable. For clarification purposes, staff suggests that License Section 3.1.1.b be amended by appending the statement: "Any and all stumpage pre-payments made to the Department, which have not been applied as credit towards harvested timber stumpage, are non-refundable upon termination of the License due to breach by Licensee, License cancellation request by Licensee, or expiration of the License."
- B. Amend License Section 3.1.1.c to incorporate payments for options to extend Milestone 3 deadline: In reviewing the Third Amendment to the License, staff found that the payments for options provided in the amendment were not actually incorporated into the terms of the License. Staff also believes that the one (1) year extension requested by TW will likely be insufficient for TW to obtain required financing, begin and complete mill construction and become operational. As such, staff recommends amending Section 3.1.1.c of the License to incorporate the terms of the payments for options to extend Milestone 3, including an additional extension of up to 24 months past the current deadline. Staff requests that Section 3.1.1.c of the License be amended by deleting the provision in its entirety and replacing it with the following:
- c. *"Drop-Dead" Date for Completion of Veneer Plant*. In the event that construction of the plant is not completed by January 1, 2009, Licensor may declare the TLL in default in accordance with the default provisions of the TLL, in which case Licensee will have 60 days to remedy the default. In any case, should Licensee elect to extend the plant construction completion date indicated as Milestone 3 in Section 3.1 from July 1, 2008, it shall pay the following extension fees:
- i. \$18,000 on or before January 1, 2009, if completion of the veneer plant is extended to the "Drop-Dead" date of January 1, 2009.
  - ii. \$22,500 on or before January 1, 2009 if completion of the veneer plant is extended beyond January 1, 2009, for the 12-month period representing calendar year 2009.
  - iii. \$18,000 on or before January 1, 2010 if completion of the veneer plant is extended beyond January 1, 2010, for the 6-month period from January 1, 2010 to June 30, 2010.

- iv. \$50,000 on or before July 1, 2010 if completion of the veneer plant is extended beyond July 1, 2010, for the 6-month period from July 1, 2010 to December 31, 2010.

All amounts paid by Licensee for failing to meet Milestone 1, 2, and 3 Deadlines will be paid to the Department.

In addition to making the above indicated payments, TW is required to meet the following deadlines:

- Licensee must obtain County of Hawaii issued and approved building permits for all major components of veneer plant no later than December 31, 2009. Licensee shall provide the Department copies of all approved County of Hawaii Permits.
- Licensee must secure all financing needed for construction of the veneer mill no later than December 31, 2009. Licensee shall provide the Department proof of attaining such additional financing.

Failure to comply with either of the above new deadlines shall constitute breach of the terms of Timber Land License No. H-101 by Licensee.

- C. Amend Section 6.3 Utilization Practices: In order to support beneficial soil nutrient cycling dynamics and long-term site productivity for on-going forestry operations, Staff recommends amending the License by deleting the last sentence of Section 6.3, and replacing it with the following:

For the purposes of maintaining site soil nutrient cycling and productivity, branches and tree tops less than four (4) inches in diameter shall be treated as logging debris pursuant to Section 6.4.

- D. Insert new Section 6.2.3 Allowable Harvest: The original License was developed directly from, represents and references the Board-approved "Forest Management Plan for the Waiakea Timber Management Area." License Section 6.2 stipulates that the required Forest Operations Plan will follow the conditions and management practices prescribed in the Forest Management Plan, which in turn recommended that no more than 500 acres of eucalyptus be harvested in any given year. This condition was intended to move the larger Waiakea Timber Management Area towards a diversified timber age status on a landscape level. Such diversity is desired in forestry practice to support continual or rotational timber production. In order to incorporate this intention in the agreement itself, Staff recommends that a new Section be inserted in the License as follows:

**6.2.3 Allowable Harvest.** Eucalyptus Harvest stands may be harvested by Licensee at a rate not to exceed 500 acres per year, unless otherwise approved in writing in advance by the Division of Forestry and Wildlife.

- E. Amend Section 7.1 Reforestation: Additional clarity regarding reforestation time frames of Harvest Stands is required. Staff recommends amending the License by appending the following clauses to Section 7.1 Reforestation:

According to the Department-approved Forest Operations Plan, Licensee shall completely replant any timber stand or portion thereof (defined as "Harvest Stands" in Exhibit C) that is harvested via clearcut operations, within six (6) months of completion of harvesting operations in that stand unless otherwise approved in writing in advance by the Division of Forestry and Wildlife. Failure to comply with this replanting condition or to obtain advance approval for non-compliance will be a breach of the terms of this License.

- F. Delete License Section 7.2 in its entirety: License Section 7.2 Stand Conversion essentially stipulates that the Licensee must convert approximately 20% of eucalyptus acreage harvested to Queensland maple upon replanting. Staff recommends deletion of License Section 7.2 in its entirety as industry and marketing indicators no longer suggest that Queensland maple should be a priority species. The Department will still retain authority to approve planting operations by the Licensee, including species selection within reason, under other License terms.

- G. Insert new Sections Regarding Harvest Stands: Additional clarity regarding management and utilization of Harvest Stands is required. Staff recommends amending the License by adding the following License Sections:

**7.5 Right to Harvest Second Rotation from "Harvest Stands".** Licensee shall have the right to harvest a second rotation from any Harvest Stand acreage previously planted by Licensee within the term of this License. Licensee shall pay Licensor according to the established License fee schedule for second rotation stumpage. Any such harvest shall not be constrained by License Section 11.13, but must be utilized for a commercial forest industry purpose.

**7.6 Final Harvest Stand Condition.** Upon early termination by Licensee, or upon expiration of this Licensee, all Harvest Stand acreage must exist in a fully stocked/forested condition pursuant to License Section 7.3, whether as recently replanted seedlings, by and at the sole expense of Licensee, or previously planted pre-merchantable commercial trees, by and at the sole expense of Licensee, according to the Department-approved Forest Operations Plan.

- H. Delete License Section 8.0 Replacement Stands in its entirety: License Section 8.0 provides guidelines for reforestation and revitalization of acreage within the TW License area where timber planted by the State decades ago performed poorly due to certain species being unsuitable for local growing conditions. The intent was to have the stands converted into desirable hardwood species to support future hardwood timber supply and reimburse TW for costs in clearing and replanting the stands. Due to delay in performance to date by TW, increasing demand for commercial forest land by other forest industry interests, and the relatively short amount of time remaining for the current



TW License, Staff recommends a major revision in this section. The changes would allow TW to clear, plant and harvest appropriate Replacement Stands while removing the provisions for Departmental reimbursement of costs during the remaining term of this License. Language that proposes removal of acreage that TW has recently expressed a lack of interest in due to specific site concerns will also be added. Staff recommends deletion of License Section 8.0 in its entirety, to be replaced with a new Section 8.0. In agreeing to this new section 8.0, the State and TW acknowledge that the land rental payment amount provided in this section may not reflect the current market rate. The rate set forth is a rate that is being agreed upon in consideration of the deletion of the stumpage credit allowed under the prior section 8.0. The replacement section is as follows:

## **8.0 REPLACEMENT STANDS**

**8.1 Replacement Stand Rental.** Licensee shall have the right to rent and utilize acreage identified as “Replacement Stands” only for the purposes of growing commercial timber species, pursuant to rights of the Licensor relating to non-timber forest products as detailed in Section 1.3, and reforestation terms as detailed in Section 7.1. Licensee shall compensate Licensor for this right in the form of a land rental payment of \$3.00 per acre per year, via annual payments due in advance. The parties acknowledge that this rate is not necessarily reflective of the fair market rental rate for this land but that it is instead an agreed upon rate. The first payment shall be due to the Department on January 1, 2009 for calendar year 2009, and on January 1<sup>st</sup> of each subsequent year that this License remains valid. Should the License remain valid through 2021, the last year of rent shall be pro-rated for the period of January 1, 2021 to August 28, 2021.

**8.1.1 Areas Defined as Replacement Stands.** On January 1, 2009, the original list of “Replacement Stands” (Exhibit C) will be reduced. The Waiakea Timber Management Area was established over the forest landscape as divided by a grid forest roads, or “block roads.” These block roads effectively partitioned the area into forty-acre timber plantation blocks. Any entire forty-acre block of timber plantation area, irregular portion of a forty-acre block, or remaining portion of a timber plantation area falling under acreage listed in Exhibit C, where greater than 50% of the underlying soil series is defined as pahoehoe-derived, shall immediately be removed from this License agreement and revert to Licensor. Pahoehoe-derived soil type locations will be determined by overlaying Hawaii State GIS digital map data layer identified as “Hawsoil.shp” on timber stand maps for the area.

**8.1.2 Replacement Stand Reforestation.** Replacement Stand areas remaining within this License must be replanted within five (5) years of January 1, 2009 by and at the sole expense of Licensee according to the following schedule:

- a. One-third (34%), approximately, replanted within three (3) years.
- b. One-third (33%) replanted within four (4) years.
- c. One-third (33%) replanted within five (5) years.

If Licensee fails to meet any of these three Replacement Stand replanting benchmarks, any unplanted Replacement Stand acreage shall immediately revert to the Licensor. Upon reversion, Licensor may seek to enter into direct negotiations or other disposition method with any other party for the reverted acreage. Licensee must replant any Replacement Stand acreage cleared of existing vegetation. Any woody biomass existing within Replacement Stand areas prior to initial reforestation efforts may be disposed of by and at the discretion of Licensee, at no fee to the Licensor, with the exceptions of any live ohia (*Metrosideros polymorpha*) tree, koa (*Acacia koa*) tree, or listed threatened and endangered species which shall not be damaged or disturbed. Furthermore, for initial land clearing operations conducted in Replacement stands only, Section 6.3 as amended shall not apply.

**8.1.3 Right to Harvest Replacement Stands.** Licensee shall have the right to harvest any Replacement Stand acreage previously planted by Licensee within the term of this License, at no fee to the Licensor. Licensee may harvest no more than 50% of re-planted Replacement Stand acreage in any given year. Any such harvest shall not be constrained by License Section 11.13, but must be utilized for a commercial forest industry purpose.

**8.1.4 Final Replacement Stand Condition.** Upon early termination by Licensee after January 1, 2014, or upon expiration of this Licensee, all Replacement Stand acreage must exist in a fully stocked/forested condition pursuant to License Section 7.3, whether as recently replanted seedlings by and at the sole expense of Licensee, or previously planted pre-merchantable commercial trees by and at the sole expense of Licensee, according to the Department-approved Forest Operations Plan.

December 12, 2008

RECOMMENDATIONS

That the Board of Land and Natural Resources approve the changes to Timber Land License No. H-101 as detailed above, subject to review and approval by the Department of the Attorney General.

Respectfully submitted,



PAUL J. CONRY  
Administrator

Attachments

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson  
Board of Land and Natural Resources

**THIRD AMENDMENT AND WAIVER  
OF  
TIMBER LAND LICENSE NO. H-101**

This Third Amendment and Waiver made and entered into this <sup>th</sup>10 day of October, 2005, by and between the State of Hawaii, by its Board of Land and Natural Resources ("Licensor") and Tradewinds LLC, a Washington limited liability company located at 2574 NW Thurman Street, Portland, Oregon 97210-25224 ("Licensee") relates to that certain Timber Land License No. H-101 between Licensor and Licensee dated August 29, 2001, covering timber harvest and replanting activities in the Waiakea area of the island of Hawaii (the "TLL"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the TLL.

**RECITALS**

WHEREAS, this TLL was amended in part by the parties on [January 28], 2005, by way of the Amendment of Timber Land License No. H-101 ("Amendment No. 1"); and

WHEREAS, this TLL was amended in part a second time on [May 13], 2005, by way of the Second Amendment of Timber Land License No. H-101 ("Amendment No. 2"); and

WHEREAS, Licensee desires to amend in part for a third time and waive in part certain provisions of the TLL; and

WHEREAS, the State of Hawaii, Board of Land and Natural Resources, at its meeting held on September 23, 2005, has approved certain amendments and waivers to the TLL to allow for the continued partnership between Licensor and Licensee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree to amend and waive the TLL as provided hereunder.

1. **Change of Domicile of Licensee.** Rockland Tradewinds LLC, the principal investor in Licensee's Phase I financing, has requested that its investment be made in a Delaware limited liability company as opposed to a Washington limited liability company, the domicile of Licensee. To accommodate this request, simultaneously with the closing of the soon-to-be completed Phase I financing necessary for the development of the Facility, Licensee proposes to transfer substantially all of its assets, including the TLL, to Tradewinds Forest Products LLC, a newly formed Delaware limited liability company. Upon such transfer, Tradewinds Forest Products LLC, a Delaware limited liability company, will become the "licensee" for purposes of the TLL. In connection with such transfer, Licensor hereby agrees to allow an assignment of the

The above milestones ("Milestones") and deadlines ("Deadlines") will replace all other milestones and deadlines in the TLL and its amendments. The previous milestone requiring substantial completion of the plant by January 1, 2007, has been eliminated.

4. **Payment for Option to Extend Milestone 3 Deadline.** Section 3.1 of the TLL originally anticipated completion of facility construction sometime in calendar year 2005. Amendment No. 1 to the TLL amended Section 3.1, and established a January 1, 2008 Deadline for completion of construction. In recognition of a further extension of the Milestone 3 construction completion deadline to July 1, 2008, Licensee hereby agrees to pay the Department of Land and Natural Resources, Division of Forestry and Wildlife ("Department") an "extension fee" in the amount of \$90,000 for the 2.5 year extension period. Such extension fee shall be payable by Licensee as follows:

- a. \$45,000 within 90 days of the date Licensor signs this Amendment and Waiver (the "Initial Payment").
- b. \$22,500 one year from the date of the Initial Payment.
- c. \$22,500 two years from the date of the Initial Payment.
- d. \$18,000 on or before January 1, 2009, if completion of the plant is extended to the "Drop-Dead" date of January 1, 2009 per Section 5.c, below.

5. **Penalties and Payments for Missing Milestones.** In the event Licensee fails to achieve one or more Milestones on or before their respective Deadlines, Licensee shall pay the Department certain penalty fees and payments. Such penalty fees and payments shall be reflected by adding the following Section 3.1.1 to the TLL:

**"3.1.1. Penalty Fees and Payments.** In the event Licensee fails to achieve one or more Milestones on or before their respective Deadlines, Licensee shall pay the Department penalty fees and payments as follows:

a. *Milestones 1 and 2.* If Licensee fails to achieve Milestone 1 (permit application) or Milestone 2 (construction commencement) on or before their respective Deadlines, then it will incur a penalty of \$200 per day for every day that the Milestone remains unmet following the respective Deadline. The \$200 per day penalty will be doubled to \$400 per day for those days in which both Milestones 1 and 2 remain simultaneously unmet. All accrued penalties will be paid on or before the 10th day of the month following each month in which a Milestone remains unmet.

b. *Milestone 3.* If Licensee fails to achieve Milestone 3 (construction completion) on or before its Deadline, then it will pre-pay for stumpage to be purchased under the TLL at the rate of \$25,000 per month for each full month in which the Milestone remains unmet. This monthly stumpage pre-payment will be paid on or before the 10<sup>th</sup> day of the month following each month in which Milestone 3 remains unmet. All pre-paid stumpage payments will be credited to Licensee on subsequent purchases of stumpage under the TLL as follows: The total amount of the credit will be amortized evenly over a 60-

the amounts to be paid shall never fall below the prices provided in Section 4.1.

- c. Price adjustment calculations shall be made quarterly (not annually) on the 28<sup>th</sup> day of August, November, February and May of any given year, and shall be based on the first-published version of the previous month's index (i.e. the July, October, January, or April index, as the case may be) as compared to the index from the previous quarter.

If, prior to August 28, 2011, the License is extended for an additional 10-year period pursuant to section 2.1, the stumpage pricing set forth in 4.1, as adjusted by the above guidelines, shall be extended through the Pricing Extension Period. The pricing for the period after the Pricing Extension Period shall be set pursuant to section 2.1."

The previously agreed pricing adjustment set forth in the second paragraph of Section 1 of Amendment No. 1 to the TLL is hereby deleted.

7. **Proposal to Expedite Start-up of a Sawmill.** To encourage the development of a sawmill utilizing timber from the WTMA the Licensor believes it is in the best interests of the state of Hawaii to withdraw from the TLL approximately seven million board feet (or approximately 6.8% of the total timber subject to the TLL) and offer such timber for sale to the public under a new request for proposal ("RFP") process to be conducted by Licensor. Accordingly, Licensor and Licensee hereby amend Exhibit B (Excluded Stands) to the TLL to include the timber stands set forth on Schedule 2 hereto, which stands will be offered for sale to the public under a new RFP, the purpose of which is to provide timber supply to a to-be-developed sawmill.

8. **Miscellaneous other Amendments to the TLL.** Licensor and Licensee hereby amend the TLL as follows:

- a. **Cure Periods.** Section 9.1 is amended to read as follows:

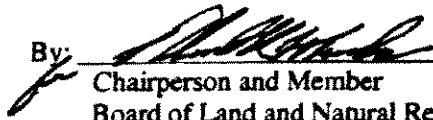
"9.1 **Suspension of Contract.** All or any part of the harvesting operations under this License may be suspended by the Administrator, by notice in writing, for violation of any of the terms, conditions and covenants herein contained, provided that written notice was first given to the Licensee and 30 calendar days from such notice were given to correct such violation; *provided, further, that* Licensee's 30-day cure period may be extended to such number of additional days as are determined by the Administrator if a delay in the cure has occurred through no fault of Licensee, such as delays due to inclement weather or other causes outside Licensee's control."

9. **General.** Except as set forth in this Third Amendment and Waiver, the TLL, as previously amended, shall remain in full force and effect. This Third Amendment and Waiver may be executed in two or more counterparts, which together shall constitute one instrument.

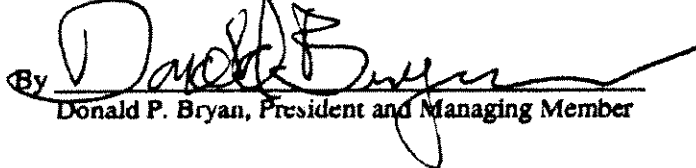
IN WITNESS WHEREOF, the undersigned have caused this Waiver and Amendment of Timber Land to be executed by their duly authorized representatives as of the date first written above.

Approved by the Board of  
Land and Natural Resources  
at its meeting held  
September 23, 2005


STATE OF HAWAII (Licensor)

By:   
Chairperson and Member  
Board of Land and Natural Resources

TRADEWINDS, LLC (Licensee)

By:   
Donald P. Bryan, President and Managing Member

Approved as to form:

  
Deputy Attorney General  
Dated: 10/08/05

**Schedule 2**

Exhibit B (Excluded Stands) to the TLL is amended to include the following timber stands:

<b>Primary Species</b>	<b>Stand Number</b>	<b>Acres</b>
Robusta	10290	30.4
	8138	57.1
	8134	38.7
Toon	10070	70.9
	10303	7.5
	10401	26.7
	10452	33.8
	10560	191.3
Nepal alder	10463	24.2
<b>TOTAL</b>		<b>480.6</b>



**EXHIBIT B**

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LALUEA H. TIMOLEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONSERVATION  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES IMPROVEMENT  
ENGINEERING

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAOHOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

June 10, 2008

Mr. Don Bryan  
Tradewinds Forest Products, LLC  
P.O. Box 43  
Ookala, HI 96774

Aloha Don,

I am writing to request information relating to the status of the veneer and power plant and the requirements of Amendment and Waiver No. 3 ("AW3") to Timber Land License H-101 held by Tradewinds Forest Products, LLC ("TFP").

According to AW3 Section 3.1, TFP was to complete plant construction of the veneer and power plants by July 1, 2008. Based on recent correspondence between us, I understand that construction of these facilities has not occurred. As such, please let me know what you intend to do with regards to Milestone 3 under AW3 Section 3.1. Specifically, under AW3 Section 5.c, TFP has the option to extend the plant construction completion date from July 1, 2008 to January 1, 2009. If you intend to exercise the option, you must notify the Department in writing prior to July 1, 2008. TFP will also be expected to comply with AW3 Section 4.d by making payment of \$18,000 to the DLNR on or before January 1, 2009.

Upon exercise of the option, TFP will also be expected to comply with AW3 Section 5.b, which requires the payment of \$25,000 per month to the Department as pre-payment for stumpage purchased under the Land License, beginning on or before August 10, 2008, and on or before the 10<sup>th</sup> day of each month thereafter until plant construction is completed, as defined under AW3 Section 3, Milestone 3 "description."

Lastly, please give me an update of the status of the construction of both the TFP veneer and power plants.

# Tradewinds Forest Products

26 June 2008

Mr. Paul Conry  
State of Hawaii  
Department of Land and Natural Resources  
Division of Forestry and Wildlife  
Post Office Box 621  
Honolulu, Hawaii 96809

HAND DELIVERED

Aloha Paul,

Thanks for your inquiry regarding the status of Tradewinds Forest Products.

We have been waiting since our public hearing (held at the end of October 2007) for our air permit.

Although the statutory 18-month deadline for the DOH to issue the final permit passed in May, we have yet to receive official notification that the permit will be granted. Two weeks ago, after an eight-month pause in communications, the DOH once again took up the matter, and we now believe it is probable that the permit will be issued within the next two months.

Because final funding for major construction depends on the official receipt of the air permit, we have been unable to proceed with construction. We have been able to move ahead with detailed engineering on the veneer peeling line and the log handling equipment. We have now invested around half a million dollars in detailed engineering. At the same time, we have been working on contracts with Raute Incorporated for the purchase and installation of the green veneer line and for log handling equipment.

We have also developed pricing and a contract with Greenberry Inc. for "balance of plant," that is all foundations, wells, wiring, power grid interconnects, fire suppression systems, roads and buildings. We have hired VERO as our on-site construction managers. All except one of the check-off items for submission to the County, such as the archaeological review, lead and asbestos inspection, landscape plan, etc. have also been completed. The final grading plan has yet to be submitted. Our storm water permit has been approved.

# Tradewinds Forest Products

RECEIVED

OCT 27 10 22

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

17 October 2008

Director Laura Thielen  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Aloha Ms. Thielen,

This letter is written to request an extension of deadlines on Tradewinds Forest Products Timber Land License H-101.

A previous extension was granted on September 3, 2005. Tradewinds is in compliance with the terms of that extension and has met all but one of its milestones, including payment to the DLNR of \$165,000 in extension fees and prepaid timber payments. Due to circumstances beyond our control, we have not started actual construction, and therefore cannot meet milestone 3.1.1 of the license-- completion of our mill by January 1, 2009.

Tradewinds has now expended over \$8 million in development and beginning construction costs, including:

- Raw material supply contracts
- Power purchase agreement with Helco
- Long term veneer sales contracts
- Receipt of all but one permit
- Logging and shipping contracts negotiated
- General contractor retained
- Contracts in place with equipment suppliers, deposits made
- Engineering is more than half complete

A detailed discussion of our current status is attached.

## **Tradewinds' Current Status**

**17 October 2008**

Much has been accomplished in the past two years.

### **Tradewinds' Team Staffing**

- ❖ Six full time and two part time employees – with 178 combined years of forest products, electrical generation and industrial construction experience.
- ❖ Legal Team
  - Jack Schifferdecker – general counsel
  - Doug Whiting – attorney handling construction and equipment agreements
  - McCorriston, Miller, Mukai – Hawaii counsel
- ❖ Moss Adams – Auditing services and tax advisor
- ❖ URS Engineering – Contracted permitting consultant
- ❖ Various specialists for support with electrical interconnection, county permits, landscape, logistics, sound, fire protection and industrial insurance.
- ❖ 109 consultants, vendors, engineers and financial individuals that have performed work on behalf of Tradewinds thus far.

### **Current Investors**

- ❖ Nine investors made equity investments. These include individuals and families who are involved in the forest products industry, banking, shipping, and energy.
- ❖ Rockland Capital of Houston, Texas is the lead investor.

### **Investments to Date**

- ❖ Approximately \$8.5 million has been invested in:
  - Site Acquisition
  - Permitting
  - Engineering
  - Equipment Deposits
  - Consultants
  - Legal

### **Construction Equity**

- ❖ Rockland Capital
- ❖ Active discussions are underway with fourteen additional institutions and individuals

### **Construction Debt**

- ❖ A local (Hawaii) bank is preparing a letter of intent to provide \$15 million in debt
- ❖ Affiliate investment banker is expressing "high confidence" in raising the remaining \$15 million

### **Mill Site Preparation**

- ❖ Piles of old rusted metal and other trash from previous industrial activities has been hauled away and the site is ready for construction.
- ❖ Four plantation-era houses have been rebuilt as offices and temporary residence for Tradewinds and construction management staff.

### **Timber Supply Contracts**

Tradewinds is confident that by the end of the year we will have executed supply contracts sufficient to keep a two-shift operation running sustainably.

- ❖ Waiakea Forest Timber Contract— Executed 3<sup>rd</sup> amendment 9-23-05
- ❖ Cambium/Pahala Timber – Executed 7-20-07
- ❖ Umikoa Ranch Timber – Executed 7-31-06
- ❖ Negotiations are currently in process with five private landowners

### **Logging & Chipping**

Trace Fitzer, a well-established logger from Washington State, has been retained to handle the logging operations for Tradewinds. Trace will hire and train as many local workers as possible.

### **Veneer Drying**

A Letter of Intent has been executed with Natron Wood Products for drying our green veneer during the period in which the cogeneration plant has not been constructed. A Letter of Intent has been executed with Natron.

### **Veneer Sales Contracts**

Veneer is a commodity which normally is bought and sold on a week-to-week basis, but we have successfully negotiated long term sales contracts with three major forest products manufacturers.

- ❖ Roseburg Forest Products Agreement - Executed
- ❖ Natron Wood Products Letter of Intent – Executed 12-7-07
- ❖ Timber Products Letter of Intent – Executed 1-17-08

### **Trans-ocean Shipping**

We have accepted a proposal from Sause Brothers, and a contract is currently being drafted.

Sause Brothers just celebrated the maiden voyage of a new barge, the Kamakani. This barge represents the results of almost ten years of engineering and is 75% more fuel efficient, faster, and significantly larger than older generation barges. Sause has been bringing wood products to the islands from the Mainland for forty years, and is very excited to have a new backhaul.

### **Power Purchase Agreement**

Tradewinds executed a power purchase agreement with Helco on July 26, of 2007. We are modifying the appendices prior to submittal to the PUC.

### **Community Relations**

Tradewinds has finished rehabilitating the four plantation-era houses on the mill site. The O'okala post office has been given new life, and that building now provides a venue for the community to hold meetings and host elections. Establishment of a community library is well underway. One local church holds its services in the community room every Sunday.

Although there is still a small group of people who remain opposed to the mill, the vast majority of our community supports our operations. At the air permit hearing held last October, approximately 150 people attended; most of whom were wearing green Tradewinds shirts. Eight people (representing five households) made statements in opposition, and twenty-three expressed their support.

- ❖ Tradewinds has negotiated fixed price construction contracts with its major suppliers.
- ❖ Power plant and dryer construction has been delayed to reduce initial expenditures and to make financing less of a challenge.

**Industrial development in Hawaii is far more difficult than we foresaw.**

Although we recognized that permitting and other government requirements could cause delays in getting started, we significantly underestimated the time and difficulty of doing industrial development work in Hawaii. The last two industrial projects on Hawaii Island (both power plants) took ten years or more from conception to startup.

Tradewinds began in 1988 as two friends, both with substantial forest industry experience, sharing a dream of a forest products industry in Hawaii. Both were running their own companies, working on Tradewinds part-time and expecting results in three years. When the reality of the effort required became apparent, one friend quit the project in 2003. The other eventually gave up his company and his home on the Mainland in 2006, making a new home in Papa'aloa, Hawaii.

**Current status:**

- ❖ We've invested ten years and have substantially completed all of our pre-development work.
- ❖ We have gathered a team of eight on-site employees, nine investors, a board of directors, and seventeen vending and consulting firms represented by more than 100 individuals. This was not as easy as it looked.

**A critical raw material source has been off the market for two years.**

One of the most suitable timber tracts on the island is the Hamakua tree farm which went "into play" when Hancock purchased it from PruTimber in 2006. Hancock offered the lease and standing timber for sale, which process took a year and a half. This removed Hamakua from the market for cutting rights during that time.

The Hamakua lease was purchased by an institutional investor last month.

**Current Status:**

- ❖ Tradewinds has a commitment from the new owners of Hamakua tree farm to supply the raw material necessary for our second shift.
- ❖ Even with the market at historic lows and construction costs at all-time highs, the mill is still economically viable.
- ❖ Negotiations are underway with several private landowners to purchase additional raw material to support a two-shift operation on a long term sustainable basis.

Although the economy is predicted to not improve substantially over the next year or so, and domestic and international markets are in continual flux, Tradewinds continues to show profitable operations. Even with the wood products market at historic lows and construction costs near all-time highs, the mill remains economically viable. This is not just a new business in Hawaii, but a new industry which is being born.

# Tradewinds Forest Products

May 15, 2009

Mr. Paul Conry  
Department of Land & Natural Resources  
State of Hawaii

VIA EMAIL, HARD COPY TO FOLLOW

Subject: Tradewinds Waiakea License

Dear Mr. Conry,

Thank you and Michael for taking the time to meet with Scott Harlan and Will Zapalac from Rockland Capital, Bob Saul from GMO Renewable Resources and me on May 5th.

As we discussed, we are now in negotiations with GMO Renewable Resources and Rockland Capital for equity capital to start construction on Tradewinds' veneer mill at O'okala. Further negotiations went well on Wednesday and Thursday and we are now beginning to draft legal documents. GMO and Rockland have proposed, in combination, to invest all required equity capital to build the veneer mill. A little less than half of the debt capital has been proposed by Central Pacific Bank. BBG Investment Bankers from Minneapolis are assigned to locate the remaining debt.

When a definitive agreement with GMO is reached, we will ask to speak with the Board regarding ownership changes in accordance with the terms of our timber license agreement.

We are targeting June 15 for finalizing definitive equity term sheets, commencing final document drafts and formally commencing negotiations for debt financing. We expect the debt process to take 90 days-- which takes us to a target financial closing on September 15.

As we discussed, Tradewinds is in a cash short position through final funding. We have reduced staff, reduced salaries, and taken all other prudent steps to conserve cash to

Mr. Paul Conry  
Department of Land & Natural Resources  
State of Hawaii  
May 15, 2009

expect the debt process to take 90 days-- which takes us to a target financial closing on September 15.

As we discussed, Tradewinds is in a cash short position through final funding. We have reduced staff, reduced salaries, and taken all other prudent steps to conserve cash to keep operating through the financial close. As a part of conserving cash, we request that DLNR forbear on collections or taking actions against Tradewinds regarding our monthly cash prepayments for stumpage. As consideration for this forbearance we would propose to pay \$5,000 per month of forbearance as a cash payment in addition to the prepayments for stumpage.

We are currently in arrears for payments due in March, April and May. Based on our planned financing schedule we propose to withhold payments for June, July, August and September and then make full payment of \$210,000 in October (7 missed \$25,000 prepayments, plus \$35,000 cash for your forbearance).

I met with the new head of the County Planning Department, Bobby-Jean Leithead earlier this week. I had hoped to come back with specific information on the sequencing, etc. of the permits. Unfortunately, our earlier work was done before she took office, so although she knew of our company, she did not have any personal knowledge of our previous dealings with the Planning Department. On a positive note, she is an enthusiastic supporter of the forest products industry, and we agreed to work together to get the information you seek.

We very much appreciate your patience with Tradewinds as we approach our mutual goal of creating a forest products industry in Hawaii.

Mahalo nui loa,



Don Bryan  
President & CEO  
Tradewinds Forest Products LLC